APPENDIX A

Judicial Code:

SEC. 79. * * * Terms of the district court for the eastern division shall be held at Chicago on the first Mondays in February, March, April, May, June, July, September, October, and November, and the third Monday in December; * * * (U. S. C., Title 28, Sec. 152).

SEC. 276 [as amended by the Act of February 3, 1917, c. 27, 39 Stat. 873]. All such jurors, grand and petit, including those summoned during the session of the court, shall be publicly drawn from a box containing, at the time of each drawing, the names of not less than three hundred persons, possessing the qualifications prescribed in the section last preceding, which names shall have been placed therein by the clerk of such court, or a duly qualified deputy clerk, and a commissioner, to be appointed by the judge thereof, or by the judge senior in commission in districts having more than one judge, which commissioner shall be a citizen of good standing, residing in the district in which such court is held, and a well-known member of the principal political party in the district in which the court is held opposing that to which the clerk, or a duly qualified deputy clerk then acting, may belong, the clerk, or a duly qualified deputy clerk, and said commissioner each to place one name in said box alternately, without

reference to party affiliations until the whole number required shall be placed therein. (U. S. C., Title 28, Sec. 412.)

SEC. 277. Jurors shall be returned from such parts of the district, from time to time, as the court shall direct, so as to be most favorable to an impartial trial, and so as not to incur an unnecessary expense, or unduly burden the citizens of any part of the district with such service. (U. S. C., Title 28, Sec. 413.)

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 145. PENALTIES.

* * * * *

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

Sections 145 (b) of the Revenue Acts of 1934, c. 277, 48 Stat. 680 (U. S. C., Title 26, Sec. 145), 1936, c. 690, 49 Stat. 1648, and 1938, c. 289, 52 Stat. 447, are identical with Section 145 (b) of the Revenue Act of 1932, *supra*.

Act of April 30, 1934, c. 170, 48 Stat. 648, Sec. 1 (U. S. C., Title 18, Sec. 556a):

That no plea to abate nor motion to quash any indictment upon the ground of irregularity in the drawing or impaneling of the

grand jury or upon the ground of disqualification of a grand juror shall be sustained or granted unless such plea or motion shall have been filed before, or within ten days after, the defendant fiing such plea or motion is presented for arraignment; * * *.

APPENDIX B

Petitioner's Petition for Rehearing filed in Circuit Court of Appeals for the Seventh Circuit, pp. 2–3:

> Your Honors appear to have mixed our case with the *Johnson* case and have decided a point not raised by us. Another examination of our brief will show your Honors that we did not complain in this Honorable Court of the action of the trial court in striking the plea in abatement. It is true that we gave the trial court a second chance to decide in our favor, which chance was included in our motion to quash, but we made no complaint in this Honorable Court of the ruling of the trial court in the first instance or the second instance. Your Honors have inadvertently erected a man of straw for demolition. We knew that the pleas in abatement were no good, and we respectfully submit that if your Honors had not confused our case with the *Johnson* case your Honors would have allowed them to be abandoned. The harm and prejudice to the defendant from this misapprehension appears to be that more important points have escaped attention. Also, we respectfully submit that by this confusion your Honors have failed to pass upon the real merits submitted to the trial court upon our motion to quash.
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> Your Honors said (p. 2, herein p. 64):
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> "Every allegation of appellant in these

pleas merely constituted a denial of specific allegations in the indictments. Such an issue might well constitute a basis for a plea in abatement, and the court quite properly set these pleas for hearing on a future date. On that date no evidence was introduced, or offered, other than that we have already stated. Upon these facts it would have been error to sustain the motions to quash, and the court did not err in dismissing the pleas."

A re-examination of the transcript (R. 34) will show that the pleas in abatement were stricken. They were never set for hearing; there was no opportunity afforded to introduce evidence. We did not complain to your Honors about the action of the trial court in regard to the pleas in abatement. We respectfully submit that your Honors have inadvertently inserted and confused our motion to quash with the record made by former counsel.

U. S. GOVERNMENT PRINTING OFFICE: 1943